

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
DOROTHY PRICE,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 2002SF0140
)	EEOC NO: 21BA18081
AUTOZONE, INC.,)	ALS NO: S11848
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On November 18, 2003, a public hearing was held in this matter. The parties filed closing briefs and responses thereto through March 18, 2004. Accordingly, this matter is ready for a decision.

Contentions of the Parties

In this case, Complainant contends that she was sexually harassed by Respondent's Parts Sales Manager, when he: 1) hit her on the buttocks with an empty pizza box; 2) also placed his hand in the middle of her back; 3) brushed his hand against her buttocks; and 4) directed an inappropriate comment toward her at work. Respondent AutoZone denies that Complainant was sexually harassed.

Findings of Fact

The following facts I found were proved by a preponderance of the evidence:

1. At all times pertinent to this complaint Dorothy Price was employed as an Assistant Store Manager at the AutoZone store in Alton, Illinois. Complainant's job duties dictated that she have immediate supervisory authority in the store when the store manager was not present.

2. At all times pertinent to this complaint, Rick Atchison was employed as the Parts Sales Manager in the Alton, Illinois AutoZone store.
3. At all times pertinent to this complaint, Complainant was Atchison's "direct report" or supervisor. (Atchison evidentiary deposition p. 5, hearing trans. Vol 1 p. 72.) Price could discipline Atchison for misconduct by "writing him up" or sending him home during his shift.
4. While employed at AutoZone on May 5, 2001, Rick Atchison walked up behind Complainant in the storeroom as she bent over the returned merchandise bin and hit her on the buttocks with an empty pizza box.
5. Complainant did not discipline Atchison for this conduct but she gave him a dirty look. Two days later Complainant complained to Store Manager Rick Thomas about Atchison's conduct.
6. On June 11, 2001, Complainant and Atchison were standing together behind the sales counter when Atchison placed his hand in the center of her back.
7. Shortly thereafter, Complainant misplaced her pricing gun and asked if anyone in the store had seen it. Atchison told Complainant where the pricing gun was located and then commented: "I'm glad I am on top of you," which Complainant construed to be a sexual comment.
8. Finally, on June 27, 2001, Complainant and Atchison were standing behind the parts counter together when Atchison walked past her and brushed his hand on her buttocks. Complainant then followed Atchison to the back of the store and in a loud tone of voice told him not to touch her again. An argument ensued between the two of them over whether or not Atchison touched Complainant and when Atchison tried to walk away from the argument, Complainant followed him to the front of the store and continued to argue in front of customers. Both Complainant and Atchison were disciplined for arguing in front of customers.

9. On June 28, 2001, Complainant complained about Atchison to Human Resources. AutoZone conducted an investigation of the allegations and determined that Complainant's allegations could not be substantiated.

10. The next day, Complainant sent a letter to Human Resources requesting a transfer out of the Alton, Illinois store so that she would not have to work with Atchison anymore.

11. AutoZone granted Complainant's request and gave her the choice of a transfer to the Delwood, Missouri store or the Jerseyville, Illinois store. Complainant chose the Jerseyville store and transferred there as the Acting Store Manager on July 1, 2001. Complainant worked at the Jerseyville store until July 19, 2001 when she took a medical leave of absence.

12. On September 14, 2001, Complainant filed a charge of discrimination with the Illinois Department of Human Rights alleging she had been sexually harassed while employed at AutoZone's Alton, Illinois store.

13. On July 29, 2002 the Illinois Department of Human rights filed a Complaint of Civil rights Violation on Complainant's behalf.

Conclusions of Law

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.

2. Complainant is an "employee" within the meaning of section 2-101(A)(1) of Illinois Human Rights Act. **775 ILCS 5/2-102(A)(1).**

3. At the time of the alleged incidents, Respondent was an "employer" within the meaning of section 2-101(B)(1)(b) of the Act and was subject to the provisions of the Act. **775 ILCS 5/2-101(B)(1)(b).**

4. Complainant failed to establish by a preponderance of the evidence a *prima facie* case of hostile work environment sexual harassment in that Complainant failed to establish the alleged conduct was sexual in nature.

Determination

This case must be dismissed as a matter of law because Complainant did not establish by a preponderance of the evidence a *prima facie* case of hostile work environment sexual harassment.

Discussion

The Act defines sexual harassment in relevant part as “...conduct of a sexual nature [which] has the purpose or effect of interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” **775 ILCS 5/2-101(E)**. Thus, in order to prevail, Complainant must prove the acts alleged here amount to “conduct of a sexual nature” under the Act.

Complainant alleged that Respondent’s Parts Sales Manager, Rick Atchison: 1) hit her on the buttocks with an empty pizza box; 2) placed his hand on her back; 3) brushed up against her buttocks behind the sales counter; and 4) told her he “was glad that he was on top of her” when he told her where to find a pricing gun that she had misplaced. Much emphasis at hearing focused on whether the conduct actually occurred because Atchison has vehemently denied each allegation. While I find that all of these incidents indeed occurred,¹ all of these things, taken separately or as a whole, do not rise to the level of “conduct of a sexual nature” as defined by the Act because the acts did not create a sexual atmosphere in the workplace. See, for example, **Jenkins and R.G. Neal Associates, Inc., d/b/a Arby’s, Inc.**, ___ Ill. HRC Rep. ___ (1994SF0818, April 28, 1995, Order on Request for Review).

At hearing the evidence showed that Atchison’s conduct of placing his hand on Complainant’s back and brushing up against her behind the counter, when taken in

¹ I find Atchison’s propensity for truthfulness was seriously undermined by the fact that while employed by Respondent he had previously stolen money or exchanged auto parts for friends, which he knew to be against AutoZone policy. Furthermore, no evidence was presented to illustrate Complainant had any reason to manufacture the allegations in this complaint.

context, were not sexual in nature. Instead, the evidence showed that the space behind the sales counter was very narrow and when an employee had to squeeze past co-workers in such a small space it could foreseeably require an innocent touching without any sexual connotation attached. Too, Atchison's statement that he was glad he was "on top" of Complainant taken in context can figuratively and reasonably be construed to mean that Atchison was glad he was paying attention to Complainant's conduct in the workplace and specifically, where she had placed her pricing gun. Complainant presented nothing else to establish this comment was meant to be a sexual innuendo. Likewise, Complainant did not present evidence to establish that being hit on the buttocks with an empty pizza box was anything other than inappropriate and immature conduct. While I believe Complainant found Atchison's conduct highly offensive, the evidence adduced at hearing proved the conduct was too tepid to amount to sexual conduct. In fact, it was nothing other than horseplay or flirtatious conduct at the most, which can never amount to sexual harassment in the workplace. See, Cates v. DCFS, ___ Ill. HRC. Rep. ___, (Charge No. 1988SF0268, December 17, 1991).

Recommendation

Based on the above findings of fact and conclusions of law, I recommend that the complaint, together with underlying Charge Number 2002SF0140, be dismissed with prejudice.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THE 20TH DAY OF AUGUST, 2004.